IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.58 of 2000

Decided on : July 3, 2007

State of Himachal Pradesh **....Appellant.**

VERSUS

Subhash Soni and another **....Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant **:** Mr. Ashok Chaudhary, Additional Advocate General.

For the respondents **:** Ms Ranjana Parmar, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. The appeal is directed by the State against the judgment of acquittal passed by the Additional Chief Judicial Magistrate, Ghumarwin, in a case under Sections 342, 325, 323 and 506 IPC.

3. Respondents were sent up for trial by the Police on the following allegations. On 10.1.1994, around 8 p.m., when injured Om Prakash (PW-1), after closing his shop, was returning home in the auto-rickshaw of PW-2 Ranjit Singh and reached near the site where PW-3 Nand Lal, his brother-in-law, had been constructing a building, he noticed that the respondents were quarrelling with his aforesaid brother-in-law, PW-3 Nand Lal. He got the auto-rickshaw stopped. As soon as he got down from the auto-rickshaw, the two respondents overpowered him and dragged him to a room of their house, situated nearby. The respondents then bolted the room from inside and gave beating to him. Respondent Subhash Soni dealt a fist blow on the mouth of PW-1 Om Prakash, as a result of which one of his teeth was broken and another one became mobile.

4. Matter was reported to the Police. PW-1 Om Prakash was got medically examined. Doctor opined that he had sustained simple as also grievous injuries. Injury to the tooth was opined to be grievous. All the injuries were observed to have been sustained within two hours. Medico legal examination was conducted at 10.10 p.m.

5. Police recorded the statements of PW-2 Ranjit Singh, PW-3 Nand Lal and other material witnesses and challaned both the respondents. Trial Court, on the conclusion of the trial, held that the case was not proved beyond reasonable doubt and consequently acquitted the respondents.

6. Appellant's grievance is that the evidence has not been appreciated correctly and undue weightage has been given to some minor contradictions in the testimony of the eye witnesses.

7. Admittedly, the site where Nand Lal, the brother-in-law of the injured, was constructing the house is close the house of the respondents. Aslo, it is not in dispute that the respondents and Nand Lal (PW-3) had been having litigation in the Civil Court about the site on which PW-3 Nand Lal had been raising construction. These facts are admitted by PW-1 Om Prakash as also by PW-3 Nand Lal. It has also come in evidence that a quarrel was going on at the site between PW-3 Nand Lal and the respondents. Nand Lal admits that he had been preparing to execute some work in connection with the laying of the slab of the building, in question, that night by means of a welding machine, which fact suggests that the quarrel probably started between the respondents and PW-3 over that intended piece of work. When this quarrel was going on PW-1 Om Prakash and PW-2 Ranjit Singh reached the spot in an auto-rickshaw.

8. The defence plea is that Om Prakash was drunk and as soon as he reached he started hurling abuses and started grappling with the respondents. From the evidence, it appears that possibility of PW-1 Om Prakash being drunk cannot be ruled out. Om Prakash, while in the

witness box, stated that soon after being taken inside the room Indian Made Foreign Liquor (IMFL) was poured into his mouth and thereafter he was beaten up. In the FIR Ex. PW-1/A, with which he was duly confronted, this fact does not find mention. That means at the time when the incident took place it was noticed that he was drunk and with a view to explaining smell of liquor or his drunkenness he has come out with this new story. The fact of his being drunk or the smell of liquor being there in his mouth lends support to the defence version.

9. In view of the abovestated position, the view taken by the trial court cannot be said to be not reasonably formable from the evidence on record. Hence, the appeal is dismissed.

July 3, 2007(sd) **(Surjit Singh), J.**